

Letter of Findings Number: 43-20110330P
Underground Storage Tank Fees
For the Tax Years 2003-2009

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ISSUE

I. Underground Storage Tank Fee – Environmental Penalty.

Authority: IC §13-23-12-1; IC § 13-23-12-7; [328 IAC 1-3-3](#); 40 CFR § 280.22.

Taxpayer protests the imposition of environmental penalties related to unpaid underground storage tank fees.

STATEMENT OF FACTS

Taxpayer operates a gas station and convenience store in Indiana. Taxpayer purchased two underground storage tanks, which were installed at Taxpayer's gas station in 2002. However, it was not until 2010 that Taxpayer discovered that it was required to have paid an annual UST registration fee for each year going back to 2002. Taxpayer paid the required fees, the Department's statutorily mandated 10 percent penalty, and interest. However, the Department also assessed a total of \$28,000 in "environmental penalties" - \$4,000 for 2003; \$4,000 for 2004; \$4,000 for 2005; \$4,000 for 2006; \$4,000 for 2007; \$4,000 for 2008; and \$4,000 for 2009. Taxpayer protests the assessment of these environmental penalties. An administrative hearing was held, and this Letter of Finding results. Additional facts will be provided as necessary.

I. Underground Storage Tank Fee – Environmental Penalty.

DISCUSSION

Taxpayer protests the imposition of environmental penalties for unpaid underground storage tank fees.

IC § 13-23-12-7(a) states:

Except as provided in subsection (e), **an owner of an underground storage tank** who:

- (1) is required to pay the fee under section 1 of this chapter; and
- (2) fails to pay the fee when due as established under section 2 of this chapter;

shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid. (Emphasis added).

Thus, if an owner of an UST does not pay the annual registration fees described in IC § 13-23-12-1, the owner... "shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid." IC § 13-23-12-7(a). This penalty is referred to as the "environmental penalty." [328 IAC 1-3-3](#)(e)(3). The Indiana Administrative Code clarifies this penalty, stating that:

For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due.

[328 IAC 1-3-3](#)(f)(2)(A) (eff. April 22, 2011), in relevant part, provides:

For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due. **The penalty will be calculated by multiplying the total number of years that have passed since the fee was due by the total number of tanks and multiplying the result by two thousand dollars (\$2,000). (Emphasis added).**

Taxpayer argues that the company that sold the USTs to Taxpayer never informed Taxpayer that it was required to register and that the fuel supplier never informed Taxpayer that it was required to register the tanks. It appears that Taxpayer believes that the seller should be liable for the penalties.

40 CFR § 280.22 states in paragraph (g) that "any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. However, 40 CFR § 280.22 states in paragraph (a) that "[a]ny owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit... a notice of existence of such tank system to the state or local agency or department designated... to receive such notice." The local agency designated by Appendix II to Part 280 is IDEM.

The environmental penalties at issue here were not assessed for failing to notify IDEM that Taxpayer had brought into use or service two new USTs. The environmental penalties in question were assessed because Taxpayer failed to pay seven consecutive annual \$90 registration fees for its two USTs, all of which went unpaid until 2009. The annual registration fee is an obligation of the owner per IC § 13-23-12-1. Thus, the seller's

obligations referred to in the federal regulation has no application to the registration fee and the environmental penalties at issue in the instant matter. In fact, Taxpayer has cited to no law which states that the seller must notify the owner of an UST that the owner must pay an annual registration fee, or for that matter, notify them on an annual basis of this obligation.

Taxpayer also maintains that a timely payment of the fees was made once Taxpayer was notified that registration fees were owed, and makes other arguments relating to equity in support of its position that the fees should be waived. However, the penalties at issue were properly assessed pursuant to IC § 13-23-12-7 and will not be abated.

FINDING

Taxpayer's protest of the imposition of environmental penalties is respectfully denied.

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